

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 06-0271**  
**Sales and Use Tax**  
**For The Tax Period 2004**

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**ISSUE**

**I. Sales and Use Tax - Imposition**

**Authority:** IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 2.5-5-2(a); 45 IAC 2.2-5-4(e); *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The taxpayer protests the assessment of use tax on an all terrain vehicle.

**STATEMENT OF FACTS**

The Taxpayer operates a farm. In 2004, the Taxpayer purchased a John Deere Trail Buck EXT (ATV). The Taxpayer submitted an exemption certificate to the seller at the time of purchase and consequently did not pay the sales tax. The Indiana Department of Revenue (Department) later determined that the purchase of the ATV did not qualify for an exemption from the sales tax. Therefore, the Department assessed Indiana use tax on the use of the ATV, interest, and penalty. The Taxpayer protested the assessment of use tax. A hearing was scheduled. The Taxpayer did not avail himself of the opportunity to appear at the hearing. This Letter of Findings is based on the documentation in the file.

**1. Sales and Use Tax -Imposition**

**Discussion**

All tax assessments are presumed to be accurate. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a).

The Taxpayer bases its claim for exemption from the use tax on the following provisions of IC § 6-2.5-5-2(a) which states as follows:

Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

This exemption statute is further explained in the Regulations at 45 IAC 2.2-5-4(e) as follows:

The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

In his protest letter, the Taxpayer stated that he used the ATV to perform the following functions:

. . . [P]icking up rocks in the fields, hauling seed and chemicals to the fields, also checking out the fields for weeds and insects. I have also placed a sprayer in the back and have used it to spot spray weeds. I did not purchase this item for recreational purposes.

An agricultural exemption from the sales and use tax does not exist just because an ATV is used on a farm rather than for recreational purposes. To qualify for the exemption, the ATV must be directly used in the direct production of food products. The ATV's functions must directly impact the food production process. Examples of exempt uses include planting seeds, treating the plants with fertilizer, and harvesting crops. According to the Taxpayer's description of the use of the ATV, it is not used in a manner directly affecting the growth of food products on the farm. Rather, the ATV is used to perform necessary, but ancillary functions such as moving rocks and transporting seed and chemical to the fields. The Taxpayer's use of the ATV does not qualify for exemption from the use tax.

### **Finding**

The taxpayer's protest to the assessment of use tax on its John Deere Trail Buck EXT is respectfully denied.